

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provision of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers)
Long Distance Carriers)

CC Docket No. 94-129

OPPOSITION TO PETITIONS FOR RECONSIDERATION

SBC Communications, on behalf of itself and its subsidiaries, (collectively referenced as "SBC") opposes in part the Petition for Reconsideration filed by WorldCom in response to the First Order on Reconsideration¹ in this proceeding. The purpose of this Order was to penalize unauthorized carriers, while compensating customers and authorized carriers for the disruption to their lawful contractual relationships. WorldCom's proposal to decrease the amount owed to an authorized carrier in a situation in which the slammed customer has paid the charges assessed by the unauthorized carrier acts to undermine the Commission's objective and is contrary to the clear language of Section 258 of the Telecommunications Act of 1996 (Act).

On the surface, WorldCom's arguments appear logical. The Commission has established a liability structure, which differentiates between a case in which the customer has paid charges unlawfully, assessed and a case in which the customer has not paid these charges. There is also no question that the unauthorized carrier is within its rights to seek to satisfy the customer it has slammed by offering an "up-front" refund of

¹ First Order on Reconsideration, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129 (rel. May 3, 2000).

amounts paid. However, if the unauthorized carrier's offer does not fully satisfy the customer, the customer can file a complaint either with the FCC or a state entity, which has "opted in" to administer the Commission's slamming rules. As a result of the complaint, under the Commission's current rules, the authorized carrier is to receive 100% of the amount initially paid by the customer as compensation for the unauthorized carrier's interference with the relationship between the customer and the authorized carrier. Simply stated, even if the unauthorized carrier refunds the full amount paid by the customer, that does not absolve the unauthorized carrier of guilt for slamming the customer in the first place.

Section 258(b), in part, expressly, states:²

Any telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber **shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe.**

This language is unequivocal. An unauthorized carrier may refund the entire amount received from a customer for reasons of customer satisfaction and to encourage the customer not to file a formal complaint, which might serve to support further regulatory sanctions. However, the unauthorized carrier chooses to attempt to appease the customer, it does not alter its statutory liability to the authorized carrier. The granting of a full refund does not under the clear terms of the statute mean the authorized carrier is entitled to 50%, rather than 100%, of the unauthorized carrier's charges, charges which were initially paid.

Although Section 258 is quoted by WorldCom, it is cited solely for the convoluted proposition that this section in the context of language from a Conference Report, supports the conclusion that the provisioning to the authorized carrier of 100% of the amount paid by the customer was intended by Congress to include reimbursements to

² 47 U.S.C. 258 (b)

be made by the *authorized* carrier to the customer. The statutory language is explicit; it is unnecessary to consult legislative history to “interpret” an unambiguous provision. Moreover, the statute makes no reference whatsoever to any required crediting of the customer by the authorized carrier.

Indeed, even if the meaning of the statutory provision was unclear, the Conference Report cited by WorldCom in a footnote³ does not support WorldCom’s position that the assessment of 150% of the amount paid against the unauthorized carrier exceeds the Commission’s statutory authority. This provision, taken by WorldCom out of context, states simply that the unauthorized carrier must reimburse the authorized carrier for “forgone revenues”, i.e. the amount paid by the customer. *In addition to this amount*, the Conference Report states that the Commission’s rules “should also provide that consumers are made whole.” The Commission’s adopted rules, which require 50% of the charges paid to be remitted back to the customer are reasonable and supported by this language. The Commission has appropriately valued the service received at 50% of the charges paid. By being “made whole”, the customer receives 50% of the charges paid for the inconvenience and injury sustained through the unauthorized carrier’s unlawful conduct, plus the value of the service.

CONCLUSION

SBC fully endorses the Commission’s recent efforts to combat slamming. As the past has demonstrated, the only way those carriers who systematically engage in slamming practices can be discouraged from doing so is to eliminate any monetary incentives. This course of action requires the enforcement and imposition of costly penalties against unauthorized carriers. The Commission’s First Order on Reconsideration, unmodified, is a necessary step toward reaching this objective. For this

³ WorldCom Petition for Reconsideration, p. 12, Ftnt.23.

reason, the Commission should deny WorldCom's Petition for Reconsideration as specified above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that on this 2nd day of October 2000, Opposition To Petitions For Reconsideration, CC Docket No. 94-129 was served first class mail - pre-paid postage to the parties attached.


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